IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8732 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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B C SHAH

Versus

OIL &NATURAL GAS CORPORATION LTD

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Appearance:

MR AK CLERK for Petitioner

MR THAKAR for Trivedi & Gupta for Respondent No. 1

NOTICE SERVED BY DS for Respondent No. 3

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CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 25/04/2000

ORAL JUDGEMENT

1. Learned advocate Mr.A.K.Clerk is appearing on behalf of the petitioner, learned advocate Mr.Thakar for Trivedi and Gupta Associates is appearing on behalf of respondent-Corporation. With the consent of both the

learned advocates, matter has been taken up for final hearing today and same is heard today.

2. The brief facts of the present petition is that petitioner joined the service of the respondent-O.N.G.C. on 26.8.87 as a Boiler Proficiency Engineer. The petitioner possesses qualification of B.E. (Electrical) and Second Class Boiler Proficiency Engineer as per Indian Boiler Act, 1923 (hereinafter referred to as `the Act') and the rules framed thereunder. The petitioner has also undergone a course of system in Boiler Operation at Sobex Jeddah, Saudi Arabia. The petitioner has also undergone professional training and operation and maintenance of 210 MW Boiler at Bhel, Trichhy from 3.4.1978 to 17.4.1978. The petitioner is a Boiler Proficiency Engineer. The date of birth of the petitioner is 30.7.1947 and at the time of joining ONGC his age was 40 years. According to the petitioner since 1987, ONGC has been giving contract of operation of medium pressure boilers Phase I & II at ONGC Hazira. The petitioner also pointed out that the contract for the work of operation of boilers at Hazira is evidently sham and bogus in view of the fact that the work of operation of boilers is undoubtedly of a permanent and perennial nature is an integral part and parcel of manufacturing process at Hazira. The petitioner further pointed out that the ONGC has been recruiting persons having requisite qualifications as per the Act for operation of boilers at Ahmedabad, Ankleshwar, Urn, Hazira etc. since 1965. ONGC has been employing persons for operating boilers at Hazira through contractors only with a view to exploiting them and depriving of the service conditions of permanent employment with ONGC. ONGC is paying them far inferior wages and service benefits like leave etc. The Central Government has issued a Notification dated 8.9.1994 by which 13 categories of work in the establishments of ONGC have been year marked for prohibition of employment of contract labour. The Boiler operators are one of the categories of employment wherein employment of contract labour is prohibited by the said Notification dtd. 8.9.94. Therefore, according to the petitioner, ONGC is prohibiting from employing the contract labour in the work of operation of boilers. The petitioner relied upon a decision of the Apex Court in the case of Air India Statutory Corporation Vs. United Labour Union & Others reported in AIR 1997 SC p.645 that once the employment of contract of labour is prohibited in any work or operation, the contract labour employed in performing the said work are entitled to be absorbed in the permanent employment of the establishment from the date of their initial joining. The petitioner also

pointed that as a Boiler Proficiency Engineer the petitioner is undoubtedly covered within the meaning of the term of "boiler operator" having regard to his duties and work. The petitioner has also submitted that he is performing the work of safe operation of boilers including starting and stopping of emergency operation in accordance with the Act and the Rules framed thereunder. The petitioner has to monitor the maintenance of safe water level, safe steam pressure, good water quality, good steam quality in the boilers, over and above safe running of auxiliaries viz. feed pumps, forced draft fans, chemical dosing pumps, deaneators, maintaining the mounting viz. level gauges, pressure gauges, temporary gauges, safety valves, blow dam valves, explosion doors, isolation valves etc in good condition. The petitioner has to do the work of logging of hourly of reading of running of boilers and auxiliaries and logging of important operation in the log book. The petitioner has also to stop the boilers in case of accident and report it to the Boiler Inspector through ONGC Engineer. The petitioner has to follow the instructions of ONGC Engineer in the matters e.g. scheduling of running time and auxiliaries, distribution system load on different boilers, outage to the boiler or the equipment for maintenance of jobs etc. from time to time. Therefore according to him that infact the petitioner is performing technical nature of work in accordance with the Act and Rules framed thereunder. The petitioner has no power of recommending disciplinary action or of granting leave and he is not performing any supervisory or managerial functions or duties. The case of the petitioner is that the respondent ONGC has issued an advertisement for recruitment of Boiler Proficiency Engineers which was published in the Gujarat Samachar dated 22.10.99 and as per the advertisement the Walk-in-interview has to be held on 5.11.99 and therefore according to his case that once the employment of contractor is prohibited in the work of Boiler Operations by the Notification dated 8.9.94, the ONGC is making direct recruitment of boiler proficiency engineers and the petitioner who has been working since 12 years may be likely to be terminated from services though he is entitled to be made permanent in view of the decision of the Apex Court in the case of Air India Statutory Corporation (supra). He also relied upon a decision reported in 1999(3) S.C.C. p.601. The petitioner has produced notification dated 8th September 1994 by the Government of India, Ministry of Labour, New Delhi, wherein the Central Government after consultation with the Central Advisory Contract Labour Board, prohibits the employment of Contract labour in various works in the establishment of ONGC in the country. In

the schedule, item no.8 relating to boiler operators. The petitioner has also produced appointing order dtd.24.8.96 Annexure `B' to the petition. The petitioner has also relied upon a decision of this Court in case of Petroleum Employees Union Vs. O.N.G.C. Ltd. in Special Civil Application No.8348 of 1997 dated 25.2.99 (Coram: Mr. Justice R.Balia). According to the petitioner, the said decision is squarely covered with the case of petitioner. The petitioner has also produced advertisement dated 22.10.99.

3. The respondent-Corporation has filed affidavit-in-reply and raised certain contention in the reply in respect to the fact that nature of work, designation are disputed by the respondent-Corporation. The Corporation has also raised contention about having alternative remedy. The Corporation has also raised contention that between the parties there are disputed question of facts and, therefore, this Court cannot exercise the powers under Article 226 of the Constitution. The Corporation has also disputed relationship with the petitioner as an employer and employee. It is also submitted that if the petitioner is made permanent as an employee of the Corporation then it amounts to having back door entry violating rules of the respondent-Corporation. It is also disputed by the Corporation that notification dated 8th September, 1994, is not applicable to the facts of the present case. It is also objection raised by the respondent Corporation that case of Air India Statutory Corporation (supra) and case of Board are not applicable to the present case. It is also disputed by the respondent-Corporation that there are not sanctioned post in the establishment of the respondent-Corporation in connection with exact type, nature and scope of contract jobs which are awarded to the concerned contractors and therefore the relief prayed by the petitioner cannot be granted.

4. Learned advocate Mr.Clerk for the petitioner submitted that the nature of duties which has been pointed out by the petitioner in para.11 the respondent-Corporation has not disputed the nature of work which has been performed by the petitioner. Mr.Clerk further submitted that even qualification, age are also not disputed by the respondent-Corporation in the reply. Mr.Clerk relied upon the notification dated 8th September, 1994, wherein the employment of contract labour in respect to boiler operators that the establishment of the ONGC in the country has been prohibited by the Central Government, Ministry of Labour, under the provisions of sub-sec.1 of Sec.10 of the

Contract Labour (Regulation and Abolition) Act, 1970. Therefore, according to his submission that very identical petition in respect to boiler operators against the very same Corporation has been decided by this Court on 25.2.99, wherein all contentions which has been raised by the Corporation has been considered by the learned Single Judge and the learned Single Judge has allowed the petition of the petitioner-union and, therefore, according to his submission that the case of the petitioner is squarely covered by the decision of this Court dated 25.2.99.

5. Learned advocate Mr.Thakar for the respondent-Corporation has pointed out that against the decision of the learned Single Judge dated 25.2.99, the Letters Patent Appeal has been filed and pending before the Division Bench of this Court. Mr.Thakar has also pointed out that the said decision is not applicable because it was a case of boiler operators, attendance, helpers and peons working with the labour contractor has been considered by the learned Single Judge but in the present case the petitioner is working as a boiler proficiency engineer and therefore said decision is not applicable having different set of facts. Mr.Thakar has also pointed out that there are disputed question of fact between the parties, petitioner having alternative remedy and therefore this Court cannot exercise the powers under Article 226 of the Constitution. He also pointed out that if petitioner is allowed to be regularised or made permanent considering the notification dated 8.9.94 it amounts to back door entry and also amounts to violating statutory rules framed by ONGC for the recruitment to the post of boiler proficiency engineer.

6. I have heard learned advocates appearing on behalf of respective parties. In the present matter, certain aspects are not disputed between the parties. The date of joining of the petitioner in service dtd.26.8.87 has not been disputed by respondent-Corporation. Even there is no dispute raise by the respondent-Corporation against the qualification and experience which having by the petitioner and also petitioner having trainee for the period from 3.4.78 to 17.4.78. In the reply, the nature of work which has been narrated by the petitioner in para 11 of the petition has not been disputed by the respondent-Corporation and, therefore, only question is required to be examined that petitioner who is working as a boiler proficiency engineer with the Corporation through contractors whether the nature of work which has been performed by the petitioner has been prohibited in the notification dated

8.9.94 or not. The said question has been examined by the learned Single Judge in detail in respect to all the contentions which are similarly raised before the learned Single Judge. The engagement of the contract labour as a boiler operator and peons in the establishment of ONGC have been prohibited by notification dated 8.9.94 issued by the Government of India, Ministry of Labour, New Delhi by the Central Government. Therefore, the issue which has been raised was about the applicability of this notification as well as about the fact that this petitioner is in fact an employee as a boiler engineer or operator or not. Ordinarily this Court would not entertain this disputed question of fact. However, on the admitted fact that the petitioner is entitled to relief claimed notification dated 8.9.94 about the abolition of contract labour act in various work in the establishment of the Corporation. I am not inclined to deliberate the petitioner to alternative remedy when the contention applicability of the notification prohibiting contract labour in the boiler department of the respondent is no more in dispute. The Apex Court in the case reported in 1997(10) SCC p.754 as well as in Air India Statutory Corporation (Supra) reported in AIR 1997 SC 645 the controversy as to consequences notification abolishing the contract system in any establishment i.e. if any person working through contractor and when a contract is not terminated forthwith in such case with effect from the date of notification such workman is considered to be an employee. If any person employed through the contract employment is to be considered contractual under the very employer. In other words, on such engagement the person becomes the employee of the establishment wherein he has been engaged. The said decision has been accepted by the Corporation and not disputed in the reply. However, the contention that has been raised by the respondent-Corporation that petitioner is not employee in any of the prohibited activity under the said notification. The said issue cannot survive in the state of affairs of the pleading and undisputed material which has been before this Court. The petitioner is listed holding requisite qualification/professional certificate. The petitioner is allowed to operate as boiler engineer as per the appointment order has been issued in favour of petitioner. The petitioner is supposed to perform of check function relating to the contract, monitor and maintaining the parameter of water level and maintaining log sheet. The designation which has been given in the appointment order to the petitioner has not been disputed by the respondent-Corporation. However, the fact that the petitioner is discharging duties in boiler department

has not been disputed nor the same can be disputed. The contention which has been raised by the respondent-Corporation that petitioner is working as boiler proficiency engineer and, therefore, he should not consider to be a boiler operator. The said contention is noticed to be rejected. The term boiler operator has not been defined. The Indian Boiler Act was enacted in 1923 with an object to protect the persons working at the Boilers which has high risk. The definition clause defining the terms reveals that boiler is a unit firm of close vessel including monitoring and it control over different system and which are internal part of it and defines economizer feed pumps, steam pipe, deanetors, chemical dosing pumps to that system. Section 29 framing all rules by appropriate government. It is the statutory obligation that the owners operating boilers must have registration for the use of such boilers. The boilers must be operate by a person having certificate from the competent authority and the boiler inspector who are entrusted with the task to seek enforcement of condition. In the absence of any technical meaning to term of boiler operator each person involved in one or other activity relating to operation of boiler is a boiler operator in ordinary meaning of the term. Therefore the designation jarnol cannot from the fact. Therefore consequences thereof must follow that this petitioner could not have been appointed through contract labour through contractors since the notification dated 8.9.94 and if petitioner has been appointed he must be treated under direct employment of the Corporation. However, consequences must follow that he must be ignored by the service condition in the Corporation engaging petitioner in boiler houses.

7. Considering the submission of both the learned advocates and observation made by me in above paragraphs, according to my opinion, this petition is required to be allowed. It is held that the respondents are not entitled to enagage in service in their boiler houses referred to above through contractors and the services in which the petitioner is discharging at their boiler houses through contractors must be deemed to be performed of duties contractual under the respondent with effect from the date of notification 8th September, 1994, in their establishment through the contractors and the petitioner must be given the terms of service as are applicable to other employees of the Corporation with effect from the date of notification dated 8th September, 1994. It is also directed to the respondent Corporation to grant all the consequential benefits to the petitioner from the date of notification dated 8th September, 1994,

as if he was employed by the respondent-Corporation with all purposes and to pay the petitioner the dues and arrears of salary and other benefits which are available to the petitioner being an employee of respondent-Corporation. It is further directed to the Corporation to pay all the benefits which are available w.e.f. 8th September, 1994 within a period of three months from the date of receiving a certified copy of this judgment. Rule is made absolute with no order as to costs.

(H.K. Rathod, J.)

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